

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Rodney J. Fulk,

Plaintiff,

v.

16-CV-215
DECISION AND ORDER

Nancy A. Berryhill,
Acting Commissioner of Social Security
Administration,

Defendant.

On March 11, 2016, the plaintiff commenced this action. Docket Item 1. On October 26, 2016, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 13. On October 13, 2016, the plaintiff moved for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 12; on December 12, 2016, the defendant responded and cross-moved for judgment on the pleadings, Docket Item 15; and on January 3, 2017, the plaintiff replied, Docket Item 16. On February 8, 2018, Judge McCarthy issued a Report and Recommendation, Docket Item 17, finding that the defendant's motion should be denied and that the plaintiff's motion should be granted only to the extent that the case be “remanded for a proper assessment of Dr. Siddiqui’s opinion concerning plaintiff’s ability to sit.” The parties did not object to the Report and Recommendation, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's Report and Recommendation. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the plaintiff's motion to remand for further proceedings and deny the defendant's motion.

For the reasons stated above and in the Report and Recommendation, the plaintiff's motion for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 12, is GRANTED to the extent noted below and is otherwise DENIED; the defendant's motion for judgment on the pleadings, Docket Item 15, is DENIED; and the matter is REMANDED for further administrative proceedings consistent with the Report and Recommendation.

This Court also accepts Judge McCarthy's recommendation to urge the Acting Commissioner "to proceed expeditiously." Docket Item 17 at 12.

The Clerk of the Court is instructed to close the file.

SO ORDERED.

Dated: March 2, 2018
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE